Supreme Court, U.S.
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No. 90-769

In The

Supreme Court of the United States

October Term, 1990

LOUISE H. RENNE, City Attorney for the City and County of San Francisco, *et al.*,

Petitioners,

v.

BOB GEARY, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed November 13, 1990
Certiorari Granted January 14, 1991

TABLE OF CONTENTS

Page

Relevant Docket Entries. 1

Complaint for Injunctive and Declaratory Relief for Violation of Civil Rights (09/11/87). 2

Answer to Complaint for Injunctive and Declaratory Relief for Violation of Civil Rights (10/26/87) 8

Motion for Summary Judgment (02/08/88). 11

Declaration of Arlo Hale Smith In Support of Summary Judgment (02/08/88) 12

Declaration of Terence Faulkner In Support of Summary Judgment (02/08/88) 15

Supplemental Declaration of Arlo Hale Smith In Support of Summary Judgment (02/29/88). 17

Supplemental Declaration of Terence Faulkner In Support of Summary Judgment (02/29/88). 21

Order Granting Partial Summary Judgment (04/27/88) . . . . . Pet. App. A-114

Judgment (04/27/88) 24

Notice of Motion and Motion to Vacate Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure (05/06/88) 25

Declaration of Winslow Christian In Support of Defendants' Motion to Vacate Judgment (05/06/88) 27

Declaration of Pat Russell In Support of Defendants' Motion to Vacate Judgment (05/20/88). 29

Declaration of Quentin Kopp In Support of Defendants' Motion to Vacate Judgment (05/20/88). 31

TABLE OF CONTENTS – Continued

Page

Declaration of Richard Mountjoy In Support of Defendants' Motion to Vacate Judgment (05/20/88) 35

Declaration of Arlo Hale Smith (05/23/88)..... 38

Order Denying Defendants' Motion to Vacate Judgment (06/09/88) 40

Ninth Circuit Decision (07/24/89).....Pet. App. A-67

Order for Reconsideration (02/06/90) ..Pet. App. A-113

Ninth Circuit *En Banc* Decision (08/14/90) . Pet. App. A-1

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

September 11, 1987 – Complaint for injunctive and declaratory relief filed by plaintiffs Bob Geary, *et al.*, in U.S. District Court for the Northern District of California.

October 26, 1987 – Answer filed by defendants Louise Renne, San Francisco City Attorney, *et al.*

February 8, 1988 – Plaintiffs' motion for summary judgment filed.

April 27, 1988 – Order entered granting plaintiffs summary judgment on third cause of action challenging constitutionality of Article II, Section 6(b), of the California Constitution.

May 2, 1988 – Final judgment entered on third cause of action.

May 6, 1988 – Defendants' motion to vacate judgment filed.

June 9, 1988 – Order entered denying defendants' motion to vacate judgment.

June 22, 1988 – Defendants' notice of appeal filed.

July 24, 1989 – Opinion and judgment of the Court of Appeals for the Ninth Circuit issued, reversing the Northern District's judgment.

February 6, 1990 – Order granting rehearing *en banc* issued by the Ninth Circuit.

August 14, 1990 – *En banc* opinion and judgment of the Ninth Circuit issued, affirming the Northern District's judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOB GEARY, *et al.*,

Plaintiffs

v. C 87 4724 AJZ

LOUISE RENNE, San Francisco City Attorney, *et al.*,

Defendants

PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATION OF CIVIL RIGHTS

Filed September 11, 1987

GENERAL ALLEGATIONS

1. Plaintiffs BOB GEARY, ROBERT SILVESTRI, DENNIS MARK, MELISSA GUNDRUN, WAYNE JOHNSON, DAVID SOULE, MAX WOODS, PETER JOHNSON, ROBERT GEBERT, and TERENCE FAULKNER are residents and registered voters of the City and County of San Francisco (hereafter "City and County").

2. Defendant DIANNE FEINSTEIN is Mayor of the City and County and is sued herein in her official capacity.

3. Defendant LOUISE RENNE is City Attorney of the City and County and is sued herein in her official capacity. As City Attorney Ms. Renne is responsible for representing other officials of the City and County in actions commenced by them.

4. Defendant PATTERSON is Registrar of Voters of the City and County and is sued herein in his official capacity. As Registrar of Voters Patterson is responsible for conducting elections in the City and County, publishing voter information pamphlets issued on behalf of the City and County, and enforcing election laws of the State of California and the City and County of San Francisco.

5. Defendant CITY AND COUNTY OF SAN FRANCISCO is a municipal corporation of the State of California.

6. Defendant BOARD OF SUPERVISORS is the legislative body of the City and County and is sued herein in its official capacity.

7. Plaintiff ELECTION ACTION is an organization dedicated to placing measures on the ballot by initiative, and campaigning for and against ballot propositions.

8. Plaintiff SUDI TRIPPET is coordinator of ELECTION ACTION.

9. In doing all acts alleged herein, defendants have been, or threaten to be, acting under color of state law.

10. In connection with each municipal election, the City and County mails a voters pamphlet to all registered voters. Said pamphlet contains ballot arguments for and against City and County measures, and statements of qualifications of candidates for City and County offices. Defendant PATTERSON is responsible for preparing and publishing said voters pamphlet.

* * *

20. This court has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1343.

* * *

THIRD CAUSE OF ACTION

31. Plaintiffs incorporate by reference paragraphs 1 through 10 and 20.

32. Plaintiff FAULKNER is Chairman of the San Francisco Republican County Central Committee and an elected member of said committee.

33. Plaintiffs WOODS, SILVESTRI, and MARK are elected members of the San Francisco Republican County Central Committee.

34. Plaintiff GEARY is an elected member of the San Francisco Democratic County Central Committee.

35. Article II, Section 6 of the California Constitution purports to outlaw actions by county central committees of political parties that have achieved ballot status – including the Republican and Democratic Parties – to endorse, support or oppose candidates for city or county offices.

36. Plaintiffs GEARY, FAULKNER, WOODS, SILVESTRI, and MARK desire to endorse, support, and oppose candidates for city and county office through their county central committees, and to publicize such endorsements by having said endorsements printed in candidate's statements published in the voter's pamphlet.

37. Each of plaintiffs would desire to read endorsements of candidates for city and county office as part of candidate's statements printed in the San Francisco voters pamphlet.

38. In the past, defendants PATTERSON and CITY AND COUNTY OF SAN FRANCISCO have deleted all references in candidate's statements for City and County offices to endorsements by political party central committees or officers or members of such committees. Unless restrained from doing so by order of this court, defendants threaten to continue to delete or exclude all references in candidate's statements to endorsement of candidates by political party central committees, or officers or members of such central committees.

39. An actual controversy exists in that:

a. Plaintiffs contend that Article II, Section 6 of the California Constitution, and any other state or local law relied upon by defendants to refuse to print endorsements of candidates for city and county office by county central committees or members or officers of such committees are violative of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. 1983 and 1985, in that said laws abridge plaintiffs' rights to free speech and association.

b. Defendants PATTERSON and CITY AND COUNTY OF SAN FRANCISCO dispute said contentions.

40. Plaintiffs and each of them have been injured by the past and threatened conduct of PATTERSON and CITY AND COUNTY OF SAN FRANCISCO in deleting endorsements of candidates for City and County office by

political party central committees and officers and members of such committees from candidate's statements printed in the voter's pamphlet.

41. Because of the past and threatened conduct of said defendants in deleting endorsements of candidates for City and County office by political party central committees and officers and members of such committees from candidate's statements printed in the voters pamphlet, plaintiffs have suffered and will suffer great and irreparable injury, in that they will be denied their constitutional and civil rights of free speech and free association, so that plaintiffs cannot fairly be compensated by damages, and are without any adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment:

* * *

3. For a judicial declaration that Article II, Section 6 of the California Constitution is unconstitutional and violative of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. 1983 and 1985.

* * *

6. For a temporary restraining order, preliminary injunction and permanent injunction to restrain PATTERSON and the CITY AND COUNTY OF SAN FRANCISCO from deleting from any candidate's statement for City and County office any reference to endorsement of the candidate by a political party central committee or a member or officer of such central committee.

* * *

8. For costs, including reasonable attorney fees.

DATED: September 8, 1987

ARLO HALE SMITH
Attorney for Plaintiffs

TERENCE FAULKNER
Plaintiff In Pro. Per.

SUDI TRIPPET
Plaintiff In Pro. Per.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEFENDANTS' ANSWER TO COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATION OF CIVIL RIGHTS

Filed October 26, 1987
[Caption Omitted In Printing]

COMES NOW Defendants LOUISE RENNE, San Francisco City Attorney; DIANNE FEINSTEIN, San Francisco Mayor; BOARD OF SUPERVISORS, City and County of San Francisco; CITY AND COUNTY OF SAN FRANCISCO; and, JAY PATTERSON, San Francisco Registrar of Voters, and, in answer to the Complaint for Injunctive and Declaratory Relief for Violation of Civil Rights on file herein, do admit, deny and allege as follows:

GENERAL ALLEGATIONS

I. In response to the allegations contained in paragraphs 1, 7 and 8 of the Complaint, Defendants lack information and belief sufficient to form an answer and on that basis deny each and every such allegation.

II. In response to the allegations contained in paragraphs 2, 3, 4, 5, 6, 9 and 10 of the Complaint, Defendants admit each and every such allegation.

* * *

VI. In response to the allegations contained in paragraphs 16, 17, 19 and 20 of the Complaint, Defendants deny each and every such allegation.

* * *

THIRD CAUSE OF ACTION

XI. In response to the allegations contained in paragraph 31 of the Complaint, Defendants incorporate by reference and reallege each and every response in paragraphs I, II and VI.

XII. In response to the allegations contained in paragraphs 32, 33, 34, 36 and 37 of the Complaint, Defendants lack information and belief sufficient to form an answer and on that basis deny each and every such allegation.

XIII. In response to the allegations contained in paragraphs 35, 40 and 41 of the Complaint, Defendants deny each and every such allegation.

XIV. In response to the allegations contained in paragraphs 38 and 39 of the Complaint, Defendants admit each and every such allegation.

* * *

AS AND FOR A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs have failed to allege facts in their Third Cause of Action sufficient to state a cause of action against Defendants.

WHEREFORE, Defendants pray that:

1. The injunctive relief prayed for by Plaintiffs be denied;

2. The declaratory relief prayed for by Plaintiffs be denied;

3. Defendants be awarded their costs of suit, including reasonable attorneys fees; and,

4. The Court award such other and further relief as it deems just and proper.

DATED: October 26, 1987

LOUISE H. RENNE
City Attorney
BURK E. DELVENTHAL
THOMAS J. OWEN
ROSE MIKSKOVSKY
Deputy City Attorneys

Attorneys for Defendants

[Proof Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Filed February 8, 1988
[Caption Omitted In Printing]

Notice is hereby given that at 1:30 PM on March 7, 1988 before Courtroom 14, United States District Court, 450 Golden Gate Avenue, San Francisco, CA, plaintiffs and each of them will move the Court for summary judgment on the First and Third Causes of Action herein. Said motion will be made on the basis of this notice, the accompanying declarations and points and authorities, the Declarations of Terence Faulkner and Sudi Trippet filed herein on September 22, 1987, and the files, papers, and records herein, and such other and further evidence or authorities as may be offered at or before the hearing on this matter. Said motion will be made on the grounds stated in the accompanying points and authorities.

DATED: February 8, 1988

Arlo Hale Smith
Attorney for Plaintiffs

Terence Faulkner
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF ARLO HALE SMITH IN SUPPORT OF SUMMARY JUDGMENT

Filed February 8, 1988
[Caption Omitted In Printing]

I, ARLO HALE SMITH, say:

I am now, and have been since 1980, a member of the San Francisco Democratic County Central Committee (hereafter "Democratic Committee"). Bob Geary, a plaintiff herein, also is now and has been since 1980, a member of the Democratic Committee.

Since at least 1982, it has been the policy of the Democratic Committee to assert the right to make endorsements of candidates for nonpartisan, i.e. local, school and judicial offices, voted on in San Francisco. The Democratic Committee, in fact, endorsed Mary Callanan for the nonpartisan local office of City Treasurer in 1985. In 1985 and 1986, the Democratic Committee passed resolutions opposing amendment of California Constitution, Article II, Section 6, to prohibit county committee endorsements for candidates for nonpartisan office, and actively campaigned against adoption of said amendment. Bob Geary voted in favor of said endorsement and resolutions. In elections since 1986, the Democratic Committee has declined to endorse candidates for nonpartisan office solely out of concern that committee members may be criminally or civilly prosecuted for violation of the endorsement ban contained in Article II, Section 6 of the California Constitution.

Bob Geary has run for office on at least two occasions and attempted to use county committee titles in his candidates statements. In 1980, Mr. Geary attempted to use the title of Patrick Fitzgerald as a Democratic County Committeemember in a candidate's statement for Supervisor. In 1982, Mr. Geary attempted to use his own title as Democratic Committeemember in his own candidate's statement for BART Board. In both cases, San Francisco Registrar of Voters Jay Patterson deleted the word "Democratic" from the candidate's statements.

I am counsel for appellants on two appeals from censorship orders obtained by Renne and Patterson pursuant to Elections Code Sections 3795 and 5025. Said cases are *Patterson* v. *Board of Supervisors* (S.F. Superior Court No. 873695; Court of Appeal, First District: No. A038352) (hereafter "Geary case") and *Patterson* v. *Board of Supervisors* (S.F. Superior Court No. 880904; Court of Appeal, First District: No. A039856) (hereafter "Faulkner case"). The appeal in the Geary case has been pending since April, 1987; in the Faulkner case since September, 1987. In both cases, I made motions to the California Court of Appeal for calendar preference in September, 1987. Although said motions were not opposed by the respondents, the motion for calendar preference was denied in the Faulkner case on or about October 29, 1987, and in the Geary case on or about November 23, 1987. Further details concerning the Geary and Faulkner cases are contained in the Declaration of Terence Faulkner (filed September 22, 1987) at pp. 3-4 and Exhibit A.

In enforcing Elections Code Sections 3795 and 5025, Renne and Patterson have acted in a highly selective and discriminatory fashion. This becomes readily apparent if

the Court contrasts the November, 1987 ballot arguments censored by Renne and Patterson pursuant to said statutes with arguments that have appeared in past voter's pamphlet and the November, 1987 voter's pamphlet without being subjected to such censorship proceedings. See Faulkner Declaration (filed September 22, 1987), Exhibit A, pp. 21-25, 47, 54, 71, 72, 75-130. The argument which appears at p. 54 of Exhibit A to said declaration was, in fact, printed at p. 98 of the November, 1987 San Francisco Voter's Pamphlet in unedited form. The Court is requested to compare said argument with those that were censored.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: February 6, 1988

ARLO HALE SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF TERENCE FAULKNER IN SUPPORT OF SUMMARY JUDGMENT

Filed February 8, 1988
[Caption Omitted In Printing]

I, TERENCE FAULKNER, say:

I am now, and have been since January, 1987, Chair of the San Francisco Republican County Central Committee (hereafter "Republican Committee"). I have served as a voting member of the Republican Committee at all times since 1974.

It is the policy of the Republican Committee to endorse candidates for nonpartisan, i.e. local, school, and judicial, offices. Until 1980, the Republican Committee regularly endorsed candidates for such offices at every election. In 1987, the Republican Committee endorsed Arlo Smith for District Attorney, Michael Hennessey for Sheriff, and John Molinari for Mayor, despite objections from some that such endorsements are prohibited by California Constitution Article I, Section 6. It is the plan and intention of the Republican Committee to endorse candidates for nonpartisan offices in as many future elections as possible. The Republican Committee would like to have such endorsements publicized by endorsed candidates in their candidate's statements in the San Francisco voter's pamphlet, and to encourage endorsed candidates to so publish their endorsements by the Republican Committee.

In the future, I and other Republican Committee members, including Robert Silvestri, Dennis Mark and Max Woods, would like to use our titles as Republican County Committeemen in endorsements we make of local candidates which are printed in the San Francisco voter's pamphlet. We cannot presently do so as Jay Patterson has a policy of deleting the word "Republican" from all such endorsements.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: February 8, 1988

TERENCE FAULKNER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUPPLEMENTAL DECLARATION OF ARLO HALE SMITH IN SUPPORT OF SUMMARY JUDGMENT

Filed February 29, 1988
[Caption Omitted In Printing]

I, ARLO HALE SMITH, declare:

I am presently Corresponding Secretary of the San Francisco Democratic County Central Committee ("Democratic Committee") and have served as an elected member of the Democratic Committee at all times from July, 1980 to the present. Prior to 1980, I was an officer of at least three different Democratic clubs in San Francisco at various times over a 7-year period.

At the present time, I serve as a member of the Board of Directors of the Bay Area Rapid Transit District (BART) – a nonpartisan office to which I was elected in November, 1986.

At the present time, I am aware of the existence of a large number of organizations in San Francisco which use the word "Democratic" as part of their names. These organizations include: San Francisco Democratic Club, Alice B. Toklas Lesbian/Gay Democratic Club, Harvey Milk Lesbian/Gay Democratic Club, Stonewall Gay Democratic Club, Latino Democratic Club, Raoul Wallenberg Jewish Democratic Club, Chinese American Democratic Club, City Democratic Club, San Francisco Democratic Women's Forum, and Golden Gate Democratic Club. I am personally a member of all of the aforementioned organizations. Each of said organizations regularly endorses

candidates for nonpartisan (local, school and judicial) office in San Francisco. All of said organizations, except the two last named, send out slate cards to at least several thousand Democratic voters at each election. Said slate cards contain endorsements of the organizations in question for nonpartisan offices in San Francisco.

I am also aware of the existence of a statewide organization of Democratic Clubs known as the California Democratic Council (CDC). In the past I have served as a delegate to at least four CDC conventions. CDC regularly endorses candidates for nonpartisan statewide office, such as judges and Superintendent of Public Instruction.

The California Democratic State Central Committee and San Francisco Democratic County Central Committee exercise no control over the endorsements of any of the foregoing organizations. Indeed, on many occasions endorsements of such organizations are contrary to those of the central committees. For example, in the November, 1987 municipal general election in San Francisco, the Democratic Committee endorsed a "NO" vote on Proposition T, while the San Francisco Democratic Club recommended a "YES" vote on said measure.

I am also aware of a large number of organizations that do not use the words "Democratic" or "Republican" in their names, but which regularly endorse candidates for nonpartisan office. Some such organizations include: the San Francisco Labor Council, the San Francisco Building Trades Council, the San Francisco Black Leadership Forum, and the Chinese Six Companies. As an elected official, I have been lobbied by several of these groups, particularly the San Francisco Labor Council and San

Francisco Building Trades Council on numerous occasions concerning legislation pending before the BART Board. Indeed, it has been my personal experience that labor organizations are willing to contribute thousands of dollars to candidates they support in BART Board races, while the various Democratic clubs that I have mentioned above contribute little or no money to campaigns of BART Board candidates.

I am also personally familiar with the fact that there are presently five political parties which have qualified to appear on the ballot in California, and to nominate candidates for all partisan offices in the State. Those political parties are: the Democratic Party, the Republican Party, the American Independent Party, the Libertarian Party and the Peace and Freedom Party. Of said five parties, only the Democratic Party and Republican Party have any significant membership or political influence. Indeed, the other three aforementioned parties generally do not nominate candidates for most of the partisan offices which appear on the ballot at any given general election. The Peace and Freedom and Libertarian Parties each have registrations of less than 1% of the registered voters in California, while the American Independent Party has a registration of less than 2% of California's registered voters. To my knowledge, no candidate nominated by any of these three parties has ever won a general election for any office in California. Indeed, the influence of said parties on candidates and officeholders is far less than that of other political organizations, such as labor unions and corporate political action committees. In San Francisco, for example, the San Francisco Labor Council and the Sierra Club have far greater political influence than

do the Libertarian, Peace and Freedom or American Independent Parties.

In addition to the foregoing political parties, I am familiar with the existence of a number of political parties in San Francisco and California which have not qualified to appear on the ballot. These would include the Socialist Workers Party, Communist Party and Spartacist League. The three aforementioned political organizations have in the past run and endorsed candidates for public office – including nonpartisan local office. The total voter registration and political influence of said organizations is, however, even less than that of the American Independent, Libertarian or Peace and Freedom Parties.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: February 26, 1988

ARLO HALE SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUPPLEMENTAL DECLARATION OF TERENCE FAULKNER IN SUPPORT OF SUMMARY JUDGMENT

Filed February 29, 1988
[Caption Omitted In Printing]

I, TERENCE FAULKNER, say:

I am Chairperson of the San Francisco Republican County Central Committee. I have served as a member of the San Francisco Republican County Central Committee at all times since 1974.

At the present time, a large number of unofficial organizations which use the name "Republican" in their names exist in San Francisco. Such organizations include Concerned Republicans For Individual Rights (CRIR), Teenage Republicans (TARs), San Francisco Young Republicans (SFYRs), California Republican League, California Republican Assembly, San Francisco Federated Republican Women, Russian American Republican Club, California Chinese Republican Association, and Chinese American Republican Club.

Most of the foregoing organizations have endorsed candidates for nonpartisan office (i.e. judicial, school, and local offices) in at least some past elections.

I am specifically aware that two of the foregoing organizations, YR's and CRIR, endorse candidates for such nonpartisan office at almost every election, and regularly issue slate cards to Republican voters listing those organizations' endorsements. In connection with

the November, 1987 general municipal election, YR's issued a slate card which was mailed to all Republican voters in San Francisco which recommended election of John Molinari for Mayor. In connection with the November, 1986 general election, CRIR mailed a slate card to several thousand Republican voters in San Francisco which recommended election of Pat Norman for Supervisor, Greg Day for School Board, Paul Wotman for Community College Board, Eugene Garfinkle for BART Board, and a "NO" vote on confirmation of California Supreme Court Chief Justice Rose Bird, among other endorsements.

I am also aware that at least three separate statewide federations of Republican Clubs exist: California Republican League (CRL), California Republican Assembly (CRA) and United Republican Clubs of California (URC). These statewide organizations all use the word "republican" in their names. CRA and CRL regularly make endorsements on all statewide offices, including nonpartisan offices (such as judges and Superintendent of Public Instruction). URC has indicated plans to make such endorsements in the future.

All of the foregoing organizations are autonomous from both the California Republican Party and California Republican State Central Committee, and the San Francisco Republican Party and San Francisco Republican County Central Committee. The California Republican State Central Committee and San Francisco Republican County Central Committee exercise no control over the activities or making of endorsements by such organizations. Indeed, in many cases the endorsements made by such organizations are contrary to those of the California

Republican State Central Committee and San Francisco Republican County Central Committee. For example, in connection with the November, 1987 San Francisco municipal general election, the San Francisco Republican County Central Committee recommended a "Yes" Vote on Proposition T (an initiative measure to reverse the giveaway of an $8 million City street to a developer), while CRIR and YR's recommended a "NO" vote on the same measure.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: February 26, 1988

TERENCE FAULKNER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOB GEARY, *et al.*,

Plaintiffs

v. C 87 4724 AJZ

LOUISE RENNE, San Francisco City Attorney, *et al.*,

Defendants

JUDGMENT

Filed April 27, 1988

This action having come before this Court, the Honorable Alfonso J. Zirpoli, United States District Judge presiding, and the issue having been duly presented and an order partially granting plaintiff's motion for summary judgment having been duly filed herein,

IT IS ORDERED AND ADJUDGED that plaintiffs' motion for summary judgment as to the THIRD CAUSE OF ACTION is granted.

IT IS FURTHER ORDERED AND ADJUDGED that there being no just reason for delay, judgment shall be entered pursuant to Rule 54(b).

DATED: April 27, 1988

ALFONSO J. ZIRPOLI
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEFENDANTS' NOTICE OF MOTION AND MOTION TO VACATE JUDGMENT PURSUANT TO RULE 59(e) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Filed May 6, 1988
[Caption Omitted In Printing]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on June 6, 1988, at 1:30 p.m., Courtroom 14 of the Court, located at 450 Golden Gate Avenue, San Francisco, Defendants LOUISE RENNE, San Francisco City Attorney, *et al.*, will move to vacate the judgment entered herein on the Third Cause of Action. The motion will be made on the ground that a case involving the central issues herein is now pending before the United States Supreme Court, and the additional ground that the order regarding the Third Cause of Action relies on erroneous legal analysis in Justice Grodin's concurring opinion in *Unger v. Superior Court*, 37 Cal.3d 612 (1984).

The motion will be based upon this notice, the supporting memorandum of points and authorities, the supporting declarations, the files herein, and such other and

further evidence and authorities as may be offered at or before the hearing on this matter.

DATED: May 6, 1988

Respectfully submitted,

LOUISE H. RENNE
City Attorney

DAVID BENJAMIN
Deputy City Attorney

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF WINSLOW CHRISTIAN IN SUPPORT OF DEFENDANTS' MOTION TO VACATE JUDGMENT

Filed May 6, 1988
[Caption Omitted In Printing]

I, Winslow Christian, declare:

1. I am the Senior Vice-President and Director of Litigation for the Bank of America.

2. From 1966 to 1983 I served as an Associate Justice of the California Court of Appeal, First Appellate District.

3. From 1959 to 1963 I served as Superior Court Judge for the County of Sierra.

4. From 1971 to 1973 I served as Executive Director of the National Center for State Courts; in that capacity I gained personal knowledge of judicial selection and tenure in many states. I learned that in certain states partisanship in judicial elections has damaged the reputation of the judiciary.

5. The state of California has a compelling interest in the independence and integrity of its judiciary. Even the mere appearance of improper influence over members of the judiciary erodes the public's confidence in its officials and institutions.

6. In my opinion, the independence of the California judiciary which is subject to election or public confirmation has depended upon the nonpartisan nature of

judicial elections. Permitting partisanship in the process of nominating, selecting and retaining judges would force judges to seek party endorsements. This process would create a risk of judicial candidates being tempted to promise to take party positions on legal issues which are pending or likely to arise. This harmful feature of partisanship in judicial elections has damaged the reputation of the judicial systems of certain other states known to me. The mere possibility of such political "deals" would undermine public confidence in the administration of justice.

7. Endorsements of judicial candidates by political parties differs from endorsements by other groups or individuals because political party endorsements tend to call for commitments on political and social issues conflicting with the overriding commitment a judge should hold to, i.e., fair and unbiased administration of justice.

8. In my opinion, therefore, partisan endorsements in nonpartisan judicial elections undermine the state's compelling interest in the independence and integrity of its judiciary.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of May, 1988 at San Francisco, California.

WINSLOW CHRISTIAN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF PAT RUSSELL IN SUPPORT OF DEFENDANTS' MOTION TO VACATE JUDGMENT

Filed May 20, 1988
[Caption Omitted In Printing]

I, Pat Russell, declare:

1. I am a past member and president of the City Council of the City of Los Angeles. I served as a member of the City Council from December, 1969 through June, 1987. I served as President of the City Council from July, 1983 through June, 1987.

2. I served as a member of the Board of Directors of the National League of Cities from 1979 to 1981.

3. I served as president of the Southern California Association of Governments from 1982 to 1983.

4. I served as president of the League of California Cities from October, 1985 to October, 1986. During my term as president, the League of California Cities strongly supported the passage of Proposition 49 (ACA 7), which added art. II, § 6(b) to the California Constitution.

5. A party endorsement can carry great weight with the voters. If partisan endorsements are permitted in local elections, most candidates will be forced to seek and secure those endorsements to compete successfully for election.

6. Generally, candidates seek the endorsement of a party or are recruited by the party. Endorsements are

generally made by a vote of the central committee upon recommendation of the select few who have conducted private candidate interviews, at which they reviewed the candidates' positions on issues and other matters of importance to the committee.

7. Once an elected official has party support, the party could speak to her on any issues, and threaten her with the loss of party support. A blanket party endorsement can become a blanket disavowal.

8. The process of securing endorsements may create the appearance that the candidate made promises to take the party position on various matters in exchange for the endorsement. This would, I believe, undermine public confidence in local officials.

9. In a partisan environment, the loss of a party endorsement is much worse than the loss of an endorsement from a special interest group or an unofficial organization. Without the support of the party, an elected official loses her base of support and, ultimately, her office.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13 day of May, 1988, at Los Angeles, California.

PAT RUSSELL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF QUENTIN KOPP IN SUPPORT OF DEFENDANTS' MOTION TO VACATE JUDGMENT

Filed May 20, 1988
[Caption Omitted In Printing]

I, Quentin L. Kopp, declare:

1. I am, and have been since December 1, 1986, a member of the Senate of the State of California. I am the only independent member of the Senate. There is no independent member of the Assembly.

2. I served as a member of the Board of Supervisors of the City and County of San Francisco from January 8, 1972 to November 3, 1986, and as President of the Board from January 8, 1976 to January 8, 1978, and from June 1982 to January 1983.

3. If party endorsements are permitted in local elections, most candidates will be forced to seek, secure and maintain a party endorsement. In many communities, the endorsement of a political party carries great weight with the voters.

4. The process of seeking, securing and maintaining a party endorsement will seriously compromise the integrity and independence of local officials. If endorsements are permitted, the parties are likely to follow the same system used in the endorsement of partisan candidates at the present time. Under that system, a candidate is either

recruited by the party, or seeks the party endorsement. Generally, the county central committee of the party, or a committee or caucus of the county central committee, will interview the candidates. The interviews are typically conducted in private. The committee, or its designated representatives, then reviews the candidates' positions on the issues, their ability to raise campaign contributions, and other factors of relevance to the committee. The county central committee then decides upon the candidate it will endorse. The endorsed candidate will receive the benefit of voters' lists, party organization, slate mailings and other forms of assistance usually associated with partisan elections.

5. This process of party endorsements and support will compromise the independence of local officials and undermine public confidence in the fair and unbiased administration of local affairs. It will create the appearance, if not the fact, that endorsed candidates have made promises to vote the party line on local issues. The fact that most endorsement interviews are conducted in private only serves to justify the fear that improper *quid pro quo* agreements are made or required as a condition of the party's endorsement. Like large campaign contributions, party endorsements will undermine the public's confidence in their local officials, because the officials will be perceived as beholden to party interests rather than to the voters themselves.

6. Endorsements by the ballot-qualified political parties are different from endorsements by unofficial parties and special interest groups, because the very purpose of creating nonpartisan offices is to minimize or eliminate the party's influence over local officials. In addition,

unofficial parties and special interest groups do not create a risk of partisan elections. When nonpartisan special interest groups like the Sierra Club, or unofficial groups like the Americans for Democratic Action, endorse candidates, they do no harm to the nonpartisan nature of local office. Partisan endorsements, however, create the risk that political parties will once again dominate local affairs – foreclosing opportunities to political newcomers, demanding adherence to the party line from those it supports, and compromising the voters' legitimate interest in the fair, impartial and independent administration of local government.

7. The prohibition against official party participation in nonpartisan local elections is designed to protect the independence and responsiveness of local offices. The nonpartisan local office was a cornerstone of the populist reform of the Hiram Johnson era. That this reform was eminently successful in protecting local governments from the stranglehold that official parties had historically exerted, should not be forgotten. Our history teaches that the concentration of too much power in party organization leads to bossism. Bossism in turn undermines both public confidence in their governments and the ability of governments to enlist the most talented and creative lawmakers and administrators.

8. Hence the nonpartisan nature of local offices serves an important public interest. Problems are first encountered and addressed at the local level. Local governments provide the foundation for legislative and executive solution to public problems. The ability of local governments to evolve and their capacity to develop new and innovative responses to public problems depend

directly upon the ability of people from all philosophic persuasions to gain public office. Participation by official parties in local elections will make it more difficult for independent thinkers who are not willing to toe the party line to be elected to office. The public is vitally interested in the ability of independent, creative office holders at the local level.

9. My experience is that official endorsements in local elections will destroy the nonpartisan nature of local offices. As a result the people will be deprived of a valuable asset in promoting a vital and responsive democracy.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of May, 1988 at Sacramento, California.

QUENTIN L. KOPP

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF RICHARD MOUNTJOY
IN SUPPORT OF DEFENDANTS' MOTION
TO VACATE JUDGMENT

Filed May 20, 1988
[Caption Omitted In Printing]

I, RICHARD MOUNTJOY, DECLARE:

1. I am, and have been a member of the California Assembly since 1978. I serve as a member and vice-chair of the Assembly Elections, Reapportionment and Constitution Amendments Committee and the Government Organization Committee, among others.

2. I was the Mayor and member of the City Council for the City of Monrovia from 1968 to 1976.

3. I was the author of Proposition 49 (ACA 7), which added Art. II, section 6(b) to the California Constitution in 1986.

4. To permit party endorsements in nonpartisan races is a most expedient way to set the wheels in motion on the old party machines.

5. A candidate either seeks a party endorsement or is recruited by the party. Traditionally, candidates seeking party endorsements would appear before the executive committees of party central committees, the central committees themselves and in some areas, specially created endorsement caucuses. The committee would then review the candidates' positions on the issues, and other matters of importance to the committee. Consequently, a party

endorsed candidate was either a long time party activist, or a newcomer who demonstrated a willingness to vote the party line.

6. The major reason for a prohibition on party endorsements is to keep partisan politics out of local government. Local government is service oriented. Decisions on whether a contract should be approved, what streets should be repaired, what programs should be funded, what permits should be granted, or who should get key appointive positions should not be based on whether those involved are active with the local party or on how the local party would like the matter to be resolved.

7. Local government is the grassroots of America. At the state and federal levels access to the system by individuals is more restricted and the issues are more complicated and philosophical in nature. In state and federal government, parties serve as a means of entry into the political structure by the average citizen. This is unnecessary, and in fact harmful at the local level where decisionmaking based on party support can be disastrous.

7. Parties are unique. Their power base is much broader than unofficial organizations and special interest groups, and not single issue oriented. An endorsement by a party would have a much greater impact on voters than would the Sierra Club, for example, but would be less informative as to where the candidate stands on local issues. Name recognition is often weak at the local level. Consequently, solicitation by the party for support of its slate of candidates among those registered with that

party would be more significant than a single issue organization's solicitation for support to its members.

8. Lifting the ban on party endorsements for nonpartisan offices is the equivalent to presenting parties with a mandate to control local government. Officeholders would be accountable first to their party and then to their constituency.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of May, 1988 at Arcadia, California.

RICHARD MOUNTJOY

[Proof Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF ARLO HALE SMITH

Filed May 23, 1988
[Caption Omitted In Printing]

I, ARLO HALE SMITH, say:

1. I am now, and have been since June, 1980, an elected member of the Democratic County Central Committee of San Francisco. I am also a member of the Bay Area Rapid Transit District (BART) Board of Directors, and have held such office since 1986. My father is now, and has been since 1979, District Attorney of the City and County of San Francisco. Both BART Director and District Attorney are local nonpartisan offices.

2. In the course of my 1986 campaign for BART Board, and through work on my father's 1979, 1983, and 1987 campaigns for District Attorney, I have become personally familiar with the endorsement practices of numerous organizations in San Francisco, which endorse the election of candidates to the offices of either or both BART Director and/or District Attorney. It has been my personal experience that virtually all of the organizations which make such endorsements do so only after the organization in question, or its executive committee or political action committee, has either interviewed the candidate, or received written responses to a questionnaire from the candidate, or both, and that such organizations seldom, if ever, make unsolicited endorsements. The organizations which follow such endorsement practices

would include the San Francisco Labor Council, the San Francisco Black Leadership Forum, the Frederick Douglass Symposium, the San Francisco League of Environmental Voters, the San Francisco Bar Association, the Chinese American Democratic Club, the Alice B. Toklas Lesbian/Gay Democratic Club, the Mexican American Political Association, the San Francisco Chapter of the Sierra Club, the National Woman's Political Caucus, and the editorial board of San Francisco's major newspapers, the Examiner, the Chronicle and the Progress. Some of the foregoing organizations even extract promises from candidates as a precondition for endorsement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 23, 1988

ARLO HALE SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOB GEARY, *et al.*,

Plaintiffs

v. C 87 4724 AJZ

LOUISE RENNE, San Francisco City Attorney, *et al.*,

Defendants

ORDER DENYING DEFENDANTS' MOTION TO VACATE JUDGMENT

Filed June 9, 1988

On April 27, 1988, this court granted plaintiffs' motion for summary judgment as to the third cause of action, finding that Article II, Section 6(b) of the California constitution, which prohibits partisan endorsements in non-partisan elections, is unconstitutional. Defendants subsequently filed a motion to vacate that judgment, which came on for hearing on June 6, 1988.

Defendants have failed to present sufficient ground for vacating this court's judgment. The court need not stay the present case during the pendency of the appeal in *San Francisco County Democratic Committee, et al. v. Eu*, 826 F.2d 814 (9th Cir. 1987), because that case does not involve the same issues as the present case. Although the Supreme Court's ruling in *Eu* might include some analysis that is relevant to this case, it will not provide a

definitive answer to the questions raised by plaintiffs' third cause of action.

Further, this court has considered the asserted weaknesses in Justice Grodin's opinion in *Ungar v. Superior Court*, 37 Cal.3d 612 (1984). Despite defendants' arguments, this court is persuaded that its original ruling as to plaintiffs' third cause of action is proper.

At the hearing on the motion to vacate, defendants' counsel requested that the court stay its ruling while defendants pursue an immediate appeal. Defendants have failed to demonstrate that they are entitled to a stay. This court has held that plaintiffs are entitled to endorse candidates in non-partisan elections. Defendants have not shown good cause for the court to preclude plaintiffs from exercising this right during the pendency of an appeal.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to vacate judgment and defendants' request for a stay are denied.

Dated: June 9, 1988

Alfonso J. Zirpoli
United States District Judge